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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re R.C., a Person Coming Under the
Juvenile Court Law.

B218492
(Los Angeles County
Super. Ct. No. CK76690)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

ROBERT C.,

Defendant and Appellant.

APPEAL from a finding and orders of the Superior Court of the County of Los Angeles, D. Zeke Zeidler, Judge. Affirmed.

Maureen L. Keaney, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the County Counsel, James M. Owens, Assistant County Counsel, Melinda S. White-Svec, Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

Robert C., father of 19-month-old R.C., appeals from the juvenile court's finding that 19-month-old R.C. is a child described by Welfare and Institutions Code section 300, subdivision (b).¹ Father contends that the juvenile court's jurisdictional finding was not supported by substantial evidence. Because the jurisdictional finding was not supported, father contends, the disposition orders must be reversed. We hold that substantial evidence supports the juvenile court's jurisdictional finding.

BACKGROUND

On March 25, 2009, the Los Angeles County Department of Children and Family Services (Department) filed a section 300 petition that alleged counts for the infliction of serious physical harm pursuant to subdivision (a), the failure to protect from serious physical harm pursuant to subdivision (b), and the infliction of severe physical abuse pursuant to subdivision (e). The petition alleged that on March 22, 2009, R.C. "was medically examined and found to be suffering from a detrimental condition consisting of a right parietal fracture, extending from the right to the left side of the child's head, a subarachnoid hemorrhage and a subdural hematoma. There was swelling to the child's head and a bruise to the child's face. The child's mother, [L.M.], and father, Robert [C.], explanation for the manner in which the child sustained the child's injuries was inconsistent with the child's injuries. Such injuries would not ordinarily occur except as the result of deliberate, unreasonable and neglectful acts by the mother and the father who had care, custody and control of the child. Such deliberate, unreasonable, and neglectful acts on the part of the mother and father endangers the child's physical and emotional health, safety and well-being, creates a detrimental home environment and places the child at risk of physical and emotional harm, damage, danger and death."

¹ All statutory citations are to the Welfare and Institutions Code unless otherwise noted.

The Department's March 25, 2009, Detention Report, states that this matter came to the Department's attention when then eight-month-old R.C. was brought to the hospital with a head injury on March 22, 2009. R.C. was placed on a hospital hold and was in the pediatrics intensive care unit.

According to the report, mother and father were not married and did not live together. Mother lived with her sister at the place where R.C. was injured. The report states that in addition to R.C., father has six other children then ranging in age from five months to 13 years, none of whom lived with father. Father's oldest child had been the subject of dependency proceedings and adopted by family members.²

On March 22, 2009, a social worker spoke with Dr. Bley, the resident physician in the pediatrics intensive care unit. Dr. Bley stated that R.C. had a right parietal fracture, mildly depressed and a small subarachnoid hemorrhage in the brain. R.C. also appeared to have a fracture on the left side of his skull, although that fracture might have been a continuation of the right side fracture. R.C. had swelling in the back of his head and a large bruise by his eye on the left side of his face. The social worker, who observed R.C. at the hospital, stated that R.C. otherwise appeared to be clean, healthy, and well cared for.

On March 22, 2009, the social worker interviewed father. Father stated that mother worked a morning shift at the Twin Towers. While mother was at work, mother's sister usually cared for R.C. That morning, mother's sister had to take her mother to a doctor's appointment, so father watched R.C. Father stated that R.C. was on the bed—at the foot of the bed—when mother returned home from work around 11:00 a.m. According to father, mother saw that R.C. was asleep and went to take a shower. Father stated he was in the next room, using a computer, when he heard three thumps and ran

² At the March 25, 2009, detention hearing, the juvenile court observed that in the dependency case involving father's oldest child, father had only been ordered to participate in parenting education and had been granted monitored visits. The juvenile court stated that from what it was able to determine, father was "rather non-offending" in that case.

into the bedroom where he found R.C. lying on his back at the head of the bed with his arms outstretched and looking “somewhat stunned.” When father picked up R.C., R.C. started to cry. At that point, mother came out of the bathroom to see what had happened. Father told the social worker, “It was my mistake, I take the blame for it all the way.”

Father told the social worker that he did not see R.C. fall off the bed. Father stated that although he left R.C. asleep at the foot of the bed, he found him on the floor near the head of the bed. There was a night table next to the bed on top of which were baby bottles and baby powder. Father theorized that R.C. woke from his nap, crawled to the bedside table looking for a baby bottle, fell off the bed, and hit his head on the table on his way down. Father stated that baby powder also had fallen on the floor.³

According to father, he and mother initially kept R.C. awake after the fall because they had heard that a baby was not supposed to be allowed to sleep after hitting his head. R.C. cried for a while and then father and mother allowed him to sleep. When father and mother noticed that the back of R.C.’s head had started to swell, they became concerned and took R.C. to the hospital emergency room.

The social worker also interviewed mother on March 22, 2009. Mother stated that she saw R.C. asleep on the bed when she arrived home from work. Mother stated she knew father was in the next room using the computer. Mother went into the bathroom to take a shower. When mother got out of the shower, she heard someone running to the bedroom and she came out to see what had happened. Mother found father holding R.C. R.C. was crying. Father said that R.C. had fallen off the bed.

The social worker noted that mother had a black eye and asked mother about it. Mother stated that she received the black eye in a fight with a woman named “Tamika,” who was interested in father. Mother did not file a police report and stated that the altercation was not a “big deal.” Mother denied there was domestic violence in her relationship with father. The social worker asked father about mother’s black eye.

³ Father told the police that R.C. could roll over and crawl on his stomach and hands.

Father also stated that mother had gotten into a fight with Tamika. Father was not present for the fight and heard about it later. Father denied any domestic violence between himself and mother

Los Angeles Police Department Abused Child Unit Detective Guzman went to mother's home. According to Detective Guzman, the bed was about three feet from the floor. The floor was carpeted. The bed had a wooden bed frame on the bottom that extended about an inch from the mattresses.⁴ There was a night stand by the bed.

On March 23, 2009, the social worker interviewed Dr. Ray Parungao, the pediatric intensivist in the critical care pediatric intensive care unit. Dr. Parungao told the social worker that R.C.'s injuries were serious and could not have occurred as the result of falling from the bed to the floor. Dr. Parungao said R.C. could have hit his head on something as he fell or flipped as he fell, thus causing a trajectory that would have caused the fall to have more force. Dr. Parungao said that father's explanation for R.C.'s injuries was possible, though not probable. Dr. Parungao also said that anything was possible because no one had seen R.C. fall. Dr. Parungao could not rule out either an accidental fall or abuse as the cause of R.C.'s injuries. A later report states that Dr. Parungao was not an expert in child abuse.

On March 23, 2009, the social worker spoke to Dr. Jung, the hospital's emergency room admitting physician. Dr. Jung stated the child's injuries could be due to a fall, depending on many other factors such as how high the bed was and what R.C. might have hit as he fell.

At the March 25, 2009, detention hearing mother's sister testified that R.C. was able to crawl on his hands and knees and walk if someone held his hand. Father testified that he put R.C. on the bed and did not put pillows on the bed around R.C. Father testified that mother was in the shower when he heard a loud "boom, boom." When father found R.C., R.C.'s "leg was twisted, and his face, his arms was all wild and his

⁴ A social worker who examined the bedroom observed that the wood frame extended about two inches from the mattresses.

mouth was open.” Father picked up R.C. R.C. screamed, his eyes rolled in the back of his head, and he shook.

The juvenile court detained R.C. from father and released R.C. to mother. The juvenile court stated that the “level of lack of appropriate supervision is amazing,” but found that father was “very credible about how the injuries occurred.” The juvenile court ordered the Department to provide family maintenance services to mother and family reunification services to father. Mother was ordered to enroll in a parenting education class. Father was granted monitored visits with R.C. The matter was set for a jurisdiction and disposition hearing on April 20, 2009.

In its April 20, 2009, Jurisdiction/Disposition Report, the Department reported that mother had no prior child welfare history. As for father’s child welfare history, the report states that a referral was generated in April 2004, with allegations that father emotionally and physically abused one of his children’s three half siblings. The allegations were substantiated and a case was opened. The same referral alleged that father physically abused his then four-month-old son. That allegation was determined to be inclusive. A May 2009 referral alleging father’s physical abuse of the same half siblings was determined to be unfounded.

The report states that mother had a conviction for petty theft in February 2009. Father was reported to have a lengthy criminal history and admitted that he was currently on parole “due to an attempted murder conviction.” Father also had been convicted of second degree robbery, threatening a witness, spousal or cohabitant abuse, possession of a controlled substance, contempt of court, and petty theft. In addition, father had been found several times to be in violation of his parole.

Mother and father were interviewed for the report. Their respective versions of the events surrounding R.C.’s injuries remained essentially the same. The Department requested that the matter be referred to Dr. Carol Berkowitz, a child abuse specialist at Harbor UCLA Hospital, for an assessment of R.C.’s injuries and medical records and that the adjudication of the section 300 petition be continued to allow time for such an assessment. The adjudication hearing ultimately was continued to August 13, 2009.

In a June 19, 2009, Last Minute Information for the Court, the Department submitted Dr. Berkowitz's written opinion on the etiology of R.C.'s injuries. Dr. Berkowitz wrote that "[b]ilateral parietal skull fractures can occur by 2 different mechanisms. One mechanism involves a single impact (as could occur with a fall) to the top of the head, with fractures then occurring down each side of the skull. The 3-D reconstruction of the bone windows from the CT scan shows that there were 2 separate impacts to R.C.'s head, eliminating a single impact as the possible mechanism. Therefore R.C.'s fracture represented a coup-contra coup mechanism, where each side of the head is separately impacted. Such injuries indicate multiple (at least 2) impacts and are highly suspicious for inflicted trauma. In addition, the fracture on the right side is depressed suggesting a contact with a sharp corner or edge, rather than a flat surface."

Dr. Berkowitz declared that she reviewed photographs of the bed and surrounding furniture. Dr. Berkowitz stated as follows: there was a base board along the side of the bed and that "[i]t would be possible for [R.C.] to have struck his head against the base board and then fallen to the floor. It is possible that a direct fall to the base board caused a fracture to one side of [R.C.'s] head, and then the fall to the floor (though this was a short distance) could have led to the contra lateral parietal skull fracture." Dr. Berkowitz wrote that, in summary, she believed that it was "equally likely that R.C.'s bilateral skull fractures occurred as a result of a fall from a bed, striking the base board and then the floor, as with him being the victim of an inflicted impact."

In a June 23, 2009, Interim Review Report, the Department reported that father had been arrested on June 12, 2009, for the rape of his 14-year-old cousin. Father reportedly was being held on a probation violation and a parole hold pending criminal charges for the rape. According to a Los Angeles County Sheriff's Department detective, father would be arrested and charged with rape by force and committing a lewd act with a child.

In a July 13, 2009, Last Minute Information for the Court, the Department stated that, according to the Sheriff's Department detective, criminal charges would not be filed against father apparently in connection with the alleged rape and sexual assault of his

cousin. Instead, the matter would be addressed through a probation violation proceeding. Father had a seven-year suspended sentence for second degree robbery, attempted murder, and threatening a witness. As a result of his probation violation, father would be serving between three and a half to seven years, with an additional one year consecutive sentence for a parole violation possible.

At the August 13, 2009, adjudication hearing, mother pleaded no contest to the section 300 petition and completed a waiver of rights form. The petition was amended as to mother to allege only a count under section 300, subdivision (b), as follows, “On March 22, 2009, the child [R.C.] was medically examined and found to be suffering a right parietal fracture, extending from the right to the left side of the child’s head, a subarachnoid hemorrhage, a subdural hematoma, and a bruise to the child’s face. Such injuries would not normally occur except as the result of neglectful acts by the mother who had care, custody and control of the child. Such neglect by the mother places the child at risk of harm.”

Thereafter, the juvenile court admitted into evidence the Department’s March 25, 2009, Detention Report; March 25, 2009, Addendum Report; April 20, 2009, Jurisdiction/Disposition Report; April 20, 2009, Last Minute Information for the Court; May 11, 2009, Last Minute Information for the Court; June 23, 2009, Interim Review Report; June 23, 2009, Last Minute Information for the Court; July 13, 2009, Last Minute Information for the Court; and hospital records. After the evidence was admitted, the matter was argued.

At the conclusion of argument, the juvenile court dismissed the counts against father under subdivisions (a) and (e) and sustained a count under subdivision (b). The juvenile court added father to the count under subdivision (b) to which mother had pleaded no contest, amending the language to substitute the word “parents” in place of “mother.”⁵ Declaring R.C. to be a dependent child of the court under section 300,

⁵ The amended count provided, “On March 22, 2009, the child [R.C.] was medically examined and found to be suffering a right parietal fracture, extending from the right to

subdivision (b), the juvenile court ordered R.C. placed with mother. The juvenile court ordered mother to receive family maintenance services and father to receive family reunification services. The juvenile court ordered that father was not to have visits with R.C. during his incarceration. After father's release, father would have monitored visits.

DISCUSSION

Father contends that substantial evidence does not support the juvenile court's finding that R.C. is a child described by section 300, subdivision (b). If the juvenile court's jurisdictional findings are not supported by substantial evidence, father contends, then the dispositional orders must be reversed. Substantial evidence supports the juvenile court's finding.

A. Standard of Review

On appeal, we review the juvenile court's finding of jurisdiction for substantial evidence. (*In re J.K.* (2009) 174 Cal.App.4th 1426, 1433.) If there is substantial evidence to support the finding, we must affirm it. "The term 'substantial evidence' means such relevant evidence as a reasonable mind would accept as adequate to support a conclusion; it is evidence which is reasonable in nature, credible, and of solid value. [Citation.]" (*Ibid.*) "The issue of sufficiency of the evidence in dependency cases is governed by the same rules that apply to other appeals." (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 947.) An appellate court does not evaluate the credibility of witnesses, reweigh the evidence, or resolve evidentiary conflicts. (*Ibid.*) Instead, the reviewing court draws all reasonable inferences in support of the juvenile court's findings, considers the record most favorably to the juvenile court's order, and affirms the order if it is

the left side of the child's head, a subarachnoid hemorrhage, a subdural hematoma, and a bruise to the child's face. Such injuries would not normally occur except as the result of neglectful acts by the parents who had care, custody and control of the child. Such neglect by the parents places the child at risk of harm."

supported by substantial evidence even if other evidence supports a contrary conclusion. (*Ibid.*)

B. Relevant Principles

A child will come within the jurisdiction of the juvenile court if “[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child” (§ 300, subd. (b).) “The statutory definition consists of three elements: (1) neglectful conduct by the parent in one of the specified forms; (2) causation; and (3) ‘serious physical harm or illness’ to the minor, or a ‘substantial risk’ of such harm or illness.” (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 820.)

The sustained amended petition states that R.C. “was medically examined and found to be suffering a right parietal fracture, extending from the right to the left side of the child’s head, a subarachnoid hemorrhage, a subdural hematoma, and a bruise to the child’s face. Such injuries would not normally occur except as the result of neglectful acts by the parents who had care, custody and control of the child. Such neglect by the parents places the child at risk of harm.” Substantial evidence supports the juvenile court’s jurisdictional finding.

When the social worker interviewed father on March 22, 2009, father stated that he believed that he left R.C. asleep at the foot of the bed and found R.C. on the floor near the head of the bed. At the detention hearing, father testified that he placed R.C. on the bed, but did not put pillows around R.C. Father told the police that R.C. could roll over and crawl on his stomach and hands. Father thus admitted that he left an eight-month-old baby he knew was able to roll over and crawl asleep and unattended at the end of the bed without any pillows around him. R.C. was not father’s first child—he was father’s seventh child. While none of father’s children lived with father, it is reasonable to infer that a parent knows, by their seventh child, not to leave an ambulatory baby asleep on a bed unattended and unprotected. Father’s conduct amounts to neglect within the meaning of subdivision (b) of section 300.

Father further contends that the Department did not demonstrate at the time of the jurisdictional hearing that R.C. was subject to a substantial risk of serious physical harm in the future. “[P]ast conduct may be probative of current conditions’ if there is reason to believe that the conduct will continue.” (*In re S.O.* (2002) 103 Cal.App.4th 453, 461, citing *In re Rocco M.*, *supra*, 1 Cal.App.4th at p. 824; but see *In re J.K.*, *supra*, 174 Cal.App.4th at pp. 1433-1438 [jurisdiction properly is found based on prior serious physical harm without showing a substantial risk of future serious harm].) Father’s conduct after R.C. sustained his injuries supports a finding of a substantial risk of future serious harm. The April 20, 2009, Jurisdiction/Disposition Report states that father had not had any visits with his seriously injured child. Father told the social worker that he did not like the fact that he, father, had to be supervised while visiting his own child, i.e. R.C. Father stated that he would consider visiting R.C. if mother’s sister were approved as a monitor. Father’s unwillingness to visit R.C. except on his terms can be viewed as a lack of concern for the child and a failure to appreciate the child’s needs. (See *In re Rocco M.*, *supra*, 1 Cal.App.4th at p. 824 [the absence of adequate supervision and care for children of “tender years” poses an inherent risk to their physical health and safety].) From father’s position, it can be inferred that there is a serious risk of future harm to the child.

Father’s only challenge to the dispositional orders is that they should be reversed if we hold that the jurisdictional findings are not supported by substantial evidence. Because we hold that the jurisdictional findings are supported by substantial evidence, we reject father’s challenge to the dispositional orders.

DISPOSITION

The juvenile court's jurisdictional finding and dispositional orders are affirmed.
NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

MOSK, J.

We concur:

ARMSTRONG, Acting P. J.

WEISMAN, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.